IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3126 OF 2004
IN
FIRST APPEAL NO.372 OF 2004

Udhav Somaji Zende .. Applicant.
Versus
Hyundai Motors India Ltd. & Ors. .. Respondents.

Mr.M.A.Utgikar for for the applicant.
Mr.Abhijit Raje i/b M/s.Gagrat & Co. for respondent no.1.
Mr.P.N.Joshi i/b Smt.Aarti P.Bhide for respondent no.4.
Mr.S.M.Vidyarthi for respondent no.3.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : MARCH 28, 2005.

P.C.

1. Heard.

2. This is original claimant's application for withdrawal of the amount deposited by the original opponent no.1, namely, Hyundai Motors India Ltd., who are the appellant before this court. The Motor Accident Claims Tribunal, Pune by the order dated 7th June, 2003 have passed award in the claim application no.1026 of 1999 directing the opponent i.e. Hyundai Motors India Ltd., to pay to the present applicant Rs.18 Lakhs inclusive of "No Fault Liability" with proportionate cost of proceedings. It is further directed that an amount

of Rs.25,000/- having been already ordered to be paid to the applicant under No Fault Liability vide order dated 3.1.2000 shall be adjusted and remaining amount of Rs.17,75,000/- shall carry interest at the rate of 9% p.a. from the date of main claim application till realisation. During the pendency of this appeal we have directed the appellant - original opponent no.1 to deposit the entire amount. Accordingly, the amount have been deposited in the trial Court and, therefore, the original claimant have moved the matter for withdrawal of the said amount.

3. The original appellant has vehemently opposed for withdrawal of the said amount on the ground that the appellant is not liable to pay the said amount of compensation, as according to the appellant, even though the appellant is the manufacturer of the car, the car was sold to the dealer and thereafter the accident has taken place and, therefore, liability to pay compensation is of dealer, namely, respondent no.2 in this appeal. Respondent no.2 has not filed any appeal challenging the order passed by the Motor Accident Claims Tribunal, rightly so, because there is no award against respondent no.2. The whole award is against present appellant. We do not find any

merit in the submission because respondent no.2 is dealer or agent of the appellant, appointed by him and, therefore, there is relationship of the principal agent and even if the agent is liable the principal cannot avoid the liability since vicariously principal is liable. So far as 100% disability of the original claimant, namely, the applicant in the present civil application is concerned, it is not in dispute that as a result of damage to spinal cord claimant is lying on the bed. It is nobody's case that claimant is not entitled for compensation. Therefore, the whole dispute boiled down as to who is liable, whether appellant or respondent no.2. For such adjudication it would be inappropriate to postpone payment of the amount to be paid to the original claimant, who is bed ridden as a result of such accident. The claimant was serving in Ordnance factory, Dehu Road and taking into consideration his pay, salary and liabilities the compensation has been fixed by the tribunal. We, therefore, find appropriate to release the amount in favour of the original claimant.

4. However, learned counsel for the appellant submitted that total amount may not be released and he further submitted that 50% of the amount be

released and 50% of the amount be kept in Nationalised bank and/or with postal authorities. The learned counsel for the applicant has submitted that total amount be released in favour of the applicant and applicant will undertake to keep 50% amount in Nationalised bank and/or with postal authorities and 50% amount may be allowed to be utilised for himself. Therefore, under above referred circumstances we find it appropriate to release total amount in favour of the applicant, out of which 50% amount will be deposited in the Nationalised bank and/or postal authorities till final disposal of the appeal. Therefore, we pass the following order:

. The amount deposited in the trial Court by the appellant shall be released in favour of the applicant by cheque. The applicant will deposit 50% of the amount in the Nationalised bank and/or postal authorities. The applicant can utilise 50% of the amount as per his choice. We direct the applicant to undertake that 50% amount would be deposited in the Nationalised bank and/or postal authorities within two weeks from today. We make it clear that the interest which will accrue on the deposits will be payable to the applicant. Civil application is disposed of.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

:hcs/mar